



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 5637-00
26 February 2001

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 13 February 2001. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Marine Corps on 6 May 1953 at the age of 17. Your record reflects that you served for about a year and two months without incident but on 24 August 1954 you were convicted by special court-martial (SPCM) of a 29 day period of unauthorized absence (UA) and possession of a false liberty card. You were sentenced to confinement at hard labor for three months, a \$50 forfeiture of pay, and reduction to paygrade E-1.

Your record further reflects that on 16 September 1954 you submitted a written statement admitting to participating in homosexual acts. This statement noted, in part, that some of these acts occurred in parked cars, and that on one occasion you stole \$110 from your coactor's wallet and assaulted him after you were confronted. At this same time you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for participating in homosexual acts. Your record also shows that prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your commanding

officer recommended that you be issued an undesirable discharge by reason of unfitness due to homosexual involvement. The Board found your request was granted on 13 October 1954 and as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You received the undesirable discharge on 3 December 1954.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, good post service conduct, and character reference letters. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the serious nature of your misconduct. The Board noted that not only did you admit to participating in homosexual acts in what could be perceived as openly in public view, but you also committed the offenses of theft and assault immediately after one of these acts. Accordingly, the Board concluded that the nature of these acts were sufficient, even under current standards, to warrant an other than honorable discharge. The Board also concluded that you received the benefit of your bargain with the Marine Corps when you were discharged at your request rather than being tried by court-martial, which could have resulted in a lengthy period of confinement as well as a punitive discharge. The Board further concluded your discharge was proper as issued and no change is warranted. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director